REGISTERED No. M. 7463.

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. VII] Trivandrum, Monday, 3rd September 1962 / 12th Bhadra 1884 [No. 122

GOVERNMENT OF KERALA

Legislature Secretariat

NOTIFICATION

No. 4040|LA.7|62. *Dated, Trivandrum, 3rd September 1962.*

The following Bills together with the Statements of Objects and Reasons are published, as ordered by the Speaker under Rule 67 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

D. TIRUMALAI IYENGAR,
Secretary,
Legislative Assembly.

1. The Mappilla Marumakkathayam (Amendment) Bill, 1962.
   L.A. Bill No. 21 of 1962.
2. The Muslim Personal Law (Shariat) Application (Kerala) Amendment Bill, 1962 .
   L.A. Bill No. 22 of 1962.
3. The Opium (Kerala Amendment) Bill, 1962.
   L.A. Bill No. 23 of 1962.
4. The Code of Criminal Procedure (Kerala Amendment) Bill, 1962.
   L.A. Bill No. 24 of 1962.
5. The Kerala Plantations (Additional Tax) Amendment Bill, 1962.
   L.A. Bill No. 25 of 1962.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1962.

L. A. Bill No. 21 of 1962.

THE MAPPILLA MARUMAKKATHAYAM (AMENDMENT) BILL, 1962

A

BILL

to amend the Mappilla Marumakkathayam Act, 1939 (Madras Act 17 of 1939).

Preamble.—WHEREAS it is expedient to amend the provisions of the Mappilla Marumakkathayam Act, 1939, for the purposes hereinafter appearing;

BE it enacted in the Thirteenth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Mappilla Marumakkathayam (Amendment) Act, 1962.

(2) It shall come into force at once.

2. *Amendment.*—In the Mappilla Marumakkathayam Act, 1939 (hereinafter referred to as the principal Act), for the words "Mappilla' or 'Mappillas' wherever they occur, the words 'Muslim' or 'Muslims' shall respectively be substituted.

3. *Amendment of section 1.*—In clause (b) of section 1 of the principal Act, for the words "Malabar district" in the two places they occur, the words "State of Kerala" shall be substituted.

4. *Insertion of new section.*—After section 13 of the principal Act, the following shall be inserted, namely:—

"13-A. *Devolution of interest in the property of Tarwad.*—When any member of a Muslim Tarwad dies after the date of publication of the Mappilla Marumakkathayam (Amendment) Bill, 1962, in the Gazette, having at the time of his or her death an interest in the property of the Tarwad, his or her interest in the property shall devolve according to the Muslim Personal Law (Shariat) and not according to the Marumakkathayam Law. Notwithstanding anything contained in this Act any person on whom such right devolves may claim to take his or her share of the properties of the Tarwad.

Explanation.—For the purposes of this section the interest of a member of a Muslim Tarwad in the property of the Tarwad shall be deemed to be the share in the property of the Tarwad that would have fallen to him or her if a partition of that property per capita had been made immediately before his or her death among the members of the Tarwad then existing, and such share shall be deemed to have been allotted to him or her absolutely."

STATEMENT OF OBJECTS AND REASONS

The Mappilla Marumakkathayam Act, 1939 (Madras Act XVII of 1939) which contains the law relating to family management, partition and succession among the Mappillas following the Marumakkathayam law is in force in the Malabar area of the State. There are, however, Muslims following Marumakkathayam law in some parts of the old Travancore-Cochin area like Chirayinkil and Quilon Taluks. But there is no codified law governing them. It is, considered necessary to have a uniform law applicable to all the Muslims in the State following the Marumakkathayam law. This Bill is intended to achieve the above object.

K. CHANDRASEKHARAN.

L. A. Bill No. 22 of 1962.

THE MUSLIM PERSONAL LAW (SHARIAT) APPLICATION (KERALA) AMENDMENT BILL, 1962

A

BILL

to amend the Muslim Personal Law (Shariat) Application Act 1937 (Central Act 26 of 1937), in its application to the State of Kerala.

Preamble.—WHEREAS it is expedient to amend the Muslim Personal Law (Shariat) Application Act, 1937 (Central Act 26 of 1937), in its application to the State of Kerala in the manner hereinafter appearing;

BE it enacted in the Thirteenth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(a) This Act may be called the Muslim Personal Law (Shariat) Application (Kerala Amendment) Act, 1962.

(b) It shall come into force at once.

2. The Muslim Personal Law (Shariat) Application Act, 1937 (hereinafter referred to as the 'said Act') shall, in its application to the State of Kerala, be amended in the manner hereinafter provided.

3. *Application of Personal Law to Muslims.*—For section 2 of the said Act, the following section shall be substituted, namely:—

"2. Notwithstanding any custom or usage to the contrary, in all questions regarding intestate succession, special property of females including personal property inherited or obtained under contract or gift or any other provisions of personal law, marriage, dissolution of marriage, including *talaq, ila, zihar, lian, kzhula* and *mubarat;* maintenance, dower, guardianship, gifts, trusts and trust properties and *wakfs,* the rule of decision in cases where the parties are Muslims, shall be the Muslim Personal Law (Shariat)".

4. *Repeal.*—The Muslim Personal Law (Shariat) Application (Madras Amendment) Act, 1949 (Madras Act XVIII of 1949), as in force in the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956), is hereby repealed.

STATEMENT OF OBJECTS AND REASONS

There are at present three enactments in force regarding the law relating to succession among Muslims in this State, namely:—

(i) The Mappilla Succession Act, 1918 (Madras Act I of 1918)—applicable to Malabar area,

(ii) The Travancore Muslim Succession Act, 1108 (XI of 1108)—applicable to Travancore area, and

(iii) The Cochin Muslim Succession Act, XV of 1108—applicable to Cochin area.

The above three Acts applicable to the different areas of the Kerala State deal with the same subject and provide that when a Muslim governed by Marumakkathayam or Aliyasanthana Law dies intestate, his personal properties shall pass to his heirs under the Muhammadan law and not to his heirs under Marumakkathayam or Aliyasanthana law.

The Travancore and Cochin Acts are modelled on the Mappilla Succession Act, 1918 (Madras Act I of 1918) which happened to be the earlier one. There are some minor differences in wording and the Cochin Act makes the provisions applicable to persons who claim to be governed by Marumakkathayam law as well. None of the Muslims of Travancore or Cochin were governed by Aliyasanthana law and as such the 2 enactments deal with persons governed by Marumakkathayam law alone.

All these enactments provide that intestate succession to the personal properties of Muslims shall be in accordance with the Mohammadan Law. The first Act extends only to the Malabar area and applies to the succession to personal properties belonging to Mappillas governed by the Marumakkathayam Law. Acts (ii) and (iii) extend to the Travancore and Cochin area respectively.

In 1937, the Centre passed the Muslim Personal Law (Shariat) Application Act. It extended to all Part A States. That Act provided that in respect of various matters including intestate succession of properties other than agricultural land, the law applicable to Muslims shall be the Muslim Personal Law (Shariat). In 1949 this Act was amended in its application to the Madras State making the provisions applicable to agricultural lands also. The result is that the law relating to intestate succession to personal properties of Muslims applicable to the Malabar area is the Central law as amended in 1949. The Mappilla Succession Act, 1918, referred to as item (i) above, has, therefore, become otiose. What is necessary, therefore, is only to formally repeal that Act.

So far as the Travancore and Cochin areas are concerned, the Central Act was extended to the Travancore-Cochin portion in 1959, and the Travancore and Cochin Muslim Succession Acts were repealed. The Central Act, however, applies to succession of properties other than agricultural lands alone. Perhaps the intention was only to repeal the Travancore and Cochin Acts in so far as they relate to succession of properties other than agricultural lands, but the repealing provision does not contain any such reservation. Hence in respect of the Travancore-Cochin area, for the purpose of unification, the Central Act has to be made applicable in respect of agricultural lands. The Bill is intended for this purpose.

K. CHANDRASEKHARAN

L. A. Bill No. 23 of 1962

THE OPIUM (KERALA AMENDMENT) BILL, 1962.

A

BILL

to amend the Opium Act, 1878, in its application to the State of Kerala.

Preamble.—WHEREAS it is expedient to amend the Opium Act, 1878, in its application to the State of Kerala, for the purposes hereinafter appearing;

BE it enacted in the Thirteenth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Opium (Kerala Amendment) Act, 1962.

(2) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. *Amendment of Central Act 1 of 1878.*—(1) In the Opium Act, 1878 (Central Act 1 of 1878), as in force in the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956),—

(i) in section 20, the words, figures and letter "or to the nearest officer of the Prohibition Department empowered under section 20A" shall be omitted; and

(ii) section 20A shall be omitted.

(2) In the Opium Act, 1878 (Central Act 1 of 1878),—

(i) in section 20, after the words "the officer in charge of the nearest police station", the words, figures and letter "or to the officer of the Excise or Prohibition Department in charge of the range, empowered under section 20A" shall be inserted;

(ii) after section 20, the following section shall be inserted, namely:—

"20A. *Power to invest Excise or Prohibition Officers with the powers of an officer in charge of a Police Station.*—The State Government may invest any officer of the Excise or Prohibition Department or any class of such officers with the powers of an officer in charge of a police station for the investigation of offences under this Act.".

STATEMENT OF OBJECTS AND REASONS

Under sections 14 and 15 of the Opium Act, 1878 (Central Act 1 of 1878), officers of the Excise Department are empowered to exercise powers of entry, search, seizure, detention and arrest in connection with the unlawful possession of opium. But they have no power to investigate the offences committed under the Act. Under section 20 of the Act, every person arrested and thing seized under section 14 or section 15 shall

be forwarded without delay to the officer-in-charge of the nearest police station for taking measures for the disposal according to law of such person or thing. In order to facilitate the speedy investigation of offences under the Act, it is considered necessary to empower certain officers of the Excise and Prohibition Departments also with the powers of an officer-in-charge of a police station for the investigation of the offences under the Act.

In the Malabar area of the State, certain officers of the Prohibition Department had been invested with the powers of an officer-in-charge of a police station for the investigation of the offences under the Opium Act, by the Opium (Madras Amendment) Act, 1951. Since provisions applicable to the whole of the State are now proposed to be made, there is no necessity to continue the amendments made in the Opium Act by the Opium (Madras Amendment) Act, 1951, and accordingly those amendments are proposed to be omitted.

This Bill is intended to achieve the above objects.

K. CHANDRASEKHARAN.

L. A. Bill No. 24 of 1962

THE CODE OF CRIMINAL PROCEDURE (KERALA AMENDMENT) BILL, 1962

A

BILL

further to amend the Code of Criminal Procedure 1898, in its application to the State of Kerala.

Preamble.—Whereas it is necessary further to amend the Code of Criminal Procedure, 1898, in its application to the State of Kerala;

Be it enacted in the Thirteenth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Code of Criminal Procedure (Kerala Amendment) Act, 1962.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. *Amendment of section 4.*—In clause (o) of sub-section (1) of section 4 of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), hereinafter referred to as the principal Act, for the words and figures "section 20 of the Cattle Trespass Act,1871" the words and figures "section 19 of the Kerala Cattle Trespass Act, 1961" shall be substituted.

3. *Amendment of section 260.*—In clause (m) of sub-section (1) of section 260 of the principal Act, for the words and figures "section 20 of the Cattle Trespass Act, 1871" the words and figures "section 19 of the Kerala Cattle Trespass Act, 1961", shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The term "offence" has been defined in section 4(1)(o) of the Code of Criminal Procedure so as to include any act in respect of which a complaint may be made under section 20 of the Cattle Trespass Act, 1871. Under Section 260(1)(m) of the Code, offences under section 20 of the Cattle Trespass Act may be tried summarily. The Code of Criminal Procedure was extended to the former Part 'B' States in 1951, but no amendment to the above sections were made to include references to the laws in force in Part 'B' States corresponding to the Cattle Trespass Act, 1871 (Central Act 1 of 1871). In the

absence of specific reference to the laws relating to Cattle Trespass in force in the former Part 'B' States, the offence under the Travancore-Cochin Cattle Trespass Act, 1125 or the Kerala Cattle Trespass Act, 1961 which has replaced it may not be triable summarily. Hence it is considered necessary to amend sections 4(1) (o) and 260(1) (m) of the Code in its application to the State of Kerala, substituting the references to section 20 of the Cattle Trespass Act, 1871, by references to the relevant provision in the Kerala Cattle Trespass Act, 1961, which is in force in the State. The Bill is intended for this purpose.

P. P. UMMER KOYA.

L.A. Bill No. 25 of 1962

THE KERALA PLANTATIONS (ADDITIONAL TAX) AMENDMENT BILL, 1962

A

BILL

to amend the Kerala Plantations (Additional Tax) Act, 1960.

Preamble.—WHEREAS it is expedient to amend the Kerala Plantations (Additional Tax) Act, 1960 for the purpose hereinafter appearing;

BE it enacted in the Thirteenth Year of the Republic of India as follows:—

1. *Short title.*—This Act may be called the Kerala Plantations (Additional Tax) Amendment Act, 1962.

2. *Insertion of new section 31A.*—After section 31 of the Kerala Plantations (Additional Tax) Act, 1960 (Act 17 of 1960), the following section shall be inserted, namely:—

"31A. *Exemption.*—(1) The Government may, by notification in the Gazette, exempt any plantation held by any public body or institution from the provisions of this Act, if the Government are satisfied that such exemption is necessary in the public interest; and the Government may, by like notification, cancel any such exemption.

(2) All notifications issued by the Government under sub-section (1), shall, as soon as may be after they are issued, be laid before the Legislative Assembly for a period of not less than fourteen days, and shall be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.".

STATEMENT OF OBJECTS AND REASONS

The Kerala Plantations (Additional Tax) Act, 1960, does not contain any provision enabling the Government to exempt any plantation from the levy of plantation tax. There are plantations in this State owned by certain institutions which are not run with any profit motive but with the intention of carrying on research operations and of propagating good varieties of seeds and seedlings. It is considered that there must be some provision in the Kerala Plantations (Additional Tax) Act to enable the Government to exempt such plantations held by public bodies or institutions from the levy of plantation tax.

The Bill is intended to achieve the above object.

K. CHANDRASEKHARAN.

Registered No. M. 7465

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. VII] Trivandrum, Monday, 3rd September 1962 / 12th Bhadra 1884 [No. 123

Report of the Select Committee on the Kerala Agriculturists Debt Relief (Amendment) Bill, 1961 and the Bill as reported by the Committee.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1962.

THE KERALA AGRICULTURISTS DEBT RELIEF (AMENDMENT) BILL, 1961

(Report of the Select Committee)

The Select Committee to which the Kerala Agriculturists Debt Relief (Amendment) Bill was referred have considered the Bill clause by clause and now sumbit this their report with the Bill as amended by the Select Committee annexed thereto.

2. The Bill was published in the Gazette Extraordinary dated the 14th December 1961.

3. The Bill was introduced in the Assembly on the 18th December 1961 and the motion for reference of the Bill to a Select Committee was adopted on the 19th December 1961.

4. The Committee met on 26th April 1962 and 23rd July 1962. The changes proposed by the Committee to the Bill and the reasons therefor are set out in the following paragraphs:

5. *Clause 1.*—The Committee consider that the amendment Bill may come into force at once instead of on a date to be appointed by the Government. Sub-clause (2) has therefore been omitted by the Committee.

6. *Clause 2.*—(i) The Committee feel that the limit of Rs. 4,000 provided in section 18(a) of the principal Act should not be taken away altogether and that it would be enough if the limit is raised to Rs. 6,500. Sub-clause (1) (i) has accordingly been modified.

(ii) The Committee are of the view that the homestead should be allotted to the debtor only if he applies for the same. The Committee also think that the words 'if it belongs to him porposed to be substituted in the proviso are not necessary.

Necessary modifications for the above purposes have been made in sub-clause (1) (ii).

7. The other changes made by the Committee are either verbal or consequential.

K. CHANDRASEKHARAN,
Chairman of the Select Committee,

33/2967/S

THE KERALA AGRICULTURISTS DEBT RELIEF (AMENDMENT) BILL, 1961

(As amended by the Select Committee)

(Words underlined indicate the amendments suggested by the Committee, omissions are indicated by asterisks).

A

BILL

further to amend the Kerala Agriculturists Debt Relief Act, 1958.

Preamble.—WHEREAS it is expedient further to amend the Kerala Agriculturists Debt Relief Act, 1958, for the purpose hereinafter appearing;

BE it enacted in the Thirteenth Year of the Republic of India as follows:—

Short title.—**** This Act may be called the Kerala Agriculturists Debt Relief (Amendment) Act, 1962.

* * * * * * * * * *

2. *Amendment of section 18.*—Section 18 of the Kerala Agriculturists Debt Relief Act, 1958 (Act 31 of 1958), shall be re-numbered as sub-section (1) of that section, and,—

(1) in sub-section (1) as so re-numbered, in clause (a),—

(i) for the words, letters and figures 'not exceeding Rs. 4,000 in value', the words, letters and figures "not exceeding Rs. 6,500 in value" shall be substituted;

(ii) in the proviso, for the words 'wherever possible', the words "on his application" shall be substituted;

(2) after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) (a) Notwithstanding anything contained in sub-section (1), where the value of the homestead allotted under clause (c) of that sub-section exceeds one-fourth of the entire assets of the debtor, or Rs. 6,500,—

(i) the amount of such excess, or, where the value of the homestead exceeds both one-fourth of the entire assets and Rs. 6,500, the excess of the value of the homestead over—

(A) one-fourth of the entire assets, or

(B) Rs. 6,500,

whichever is smaller,

shall be deposited by the debtor in court in fifteen half-yearly instalments together with interest accrued due on the amount

outstanding after payment of each instalment at the rate of 5 per cent per annum for distribution to the creditors in the manner specified in clause (b) of the said sub-section;

(ii) for the amount of the excess to be deposited by the debtor under sub-clause (i), there shall be a first charge on the homestead subject only to the charge for public revenue due on land as defined in the Revenue Recovery Act for the time being in force or any tax, cess, fee or such other dues chargeable by virtue of any enactment for the time being in force in respect of the land on which the homestead is situated.

(b) The first instalment of such excess amount shall be payable before the expiry of a period of six months from the date of allotment of the homestead.".

Legislature Secretariat,
Trivandrum,
3rd September 1962.

D. TIRUMALAI,
Secretary,
Legislative Assembly.